

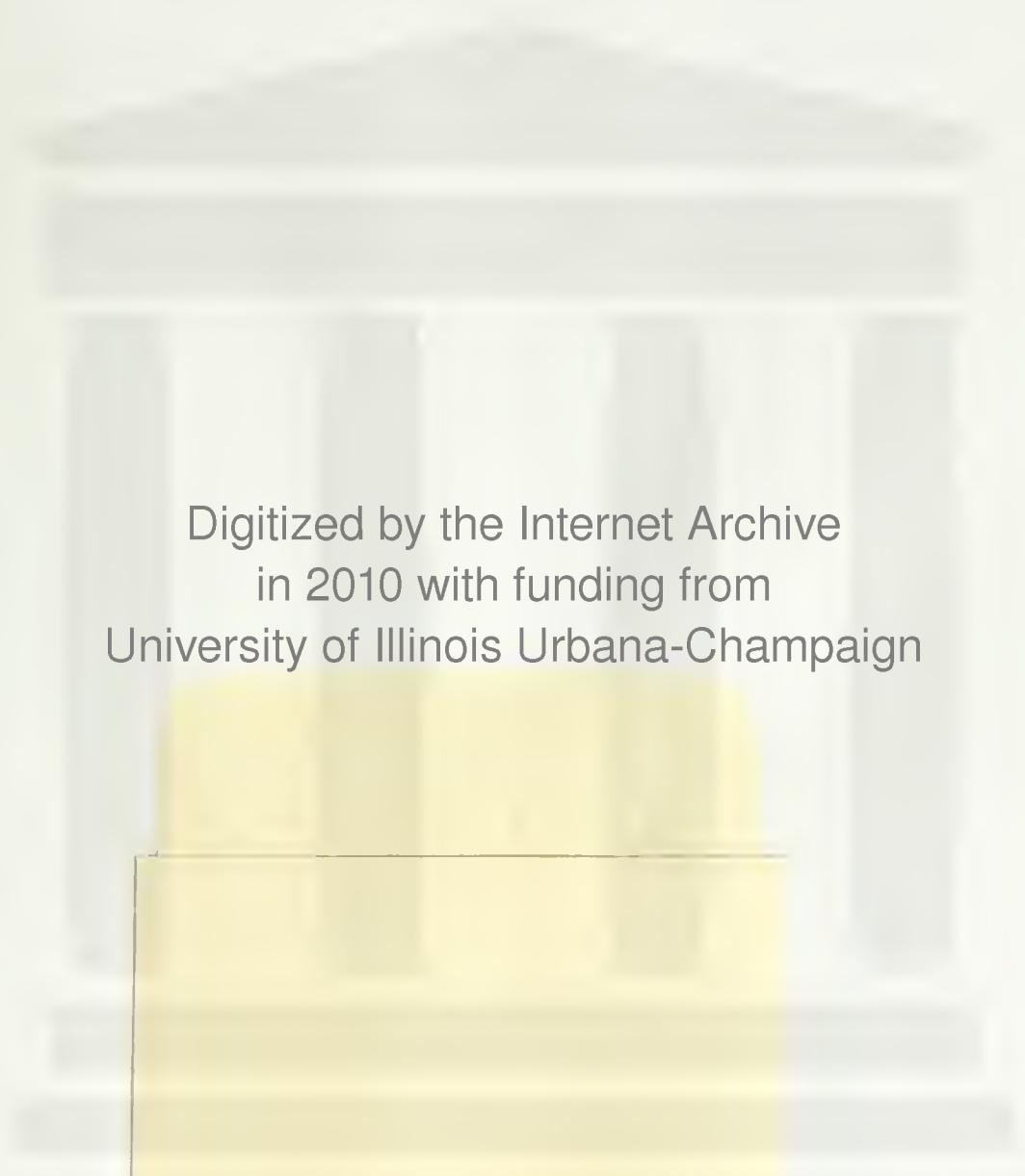
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**PLANNED UNIT DEVELOPMENT: THEORETICAL ORIGINS
EVOLUTIONARY FRAMEWORK**

Dr. George Sternlieb, Director
Dr. Robert W. Burchell, Associate
Dr. James W. Hughes, Associate
Center for Urban Policy Research
Rutgers University, New Brunswick, N. J.

Mrs. Mary Vance, Editor
Post Office Box 229
Monticello, Illinois 61856

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by

Dr. George Sternlieb*
Dr. Robert W. Burchell
Dr. James W. Hughes

*Director and associates
Center for Urban Policy Research
Rutgers University
New Brunswick, New Jersey

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INTRODUCTION

The object of the following bibliography is to present to the reader the basic building blocks of Planned Unit Development* research. This presentation is specifically keyed to the areas where most of the literature is concentrated. In this vein, the annotated subject matter will encompass PUD's theoretical origins, basic definition, evolutionary framework and practical process.

A diversion must be made at this point, however, to briefly mention two areas which are not well covered in the literature but about which current interest in PUD is centered (1,8).

It will be seen from the developing literature that the PUD/PURD land development concept offers a variety of uses. In peripheral areas, PUD is able to transform large acreages of land into residential, commercial and industrial uses while effectively controlling, for the first time, the tempo and sequence of

* Planned Unit Development (PUD) is a means of residential land development which sets aside traditional preset land use controls in favor of more administrative discretion to local authorities. It permits a mixture of land uses, i.e., residential, commercial and industrial, creativity in design including both the clustering and mixing of types and finally, the provision of common and public open space, the former to be used by and maintained for the residents of the proposed development. The tract of land is developed as a whole according to a plan with one or more of its nonresidential elements serving regional as well as local needs.

Planned Unit Residential Development (PURD) is a smaller type of planned residential development which may not employ as many different land uses and whose nonresidential elements are only local in nature. In all other ways, however, it is similar to the larger and more regional planned unit development.

peripheral development (3,6,7). Additionally in suburban areas PUD allows moderate-sized tracts of land, which may separate such disparate elements as highway commercial development and quiet residential areas, to be developed employing mixed land uses in a way which provides both an acceptable transitional mechanism and maximum utilization of the particular site (4,5). Finally, in urban areas PUD provides a means of developing smaller areas of land into multiple land uses usually unavailable in conventional zoning. Additionally, this process is usually unencumbered by the bureaucratic delays currently hampering traditional modes of center-city land development.

Yet a realistic appraisal of PUD's proliferation is tied to two issues: (1) its relatively low-level and steady impact on the local property tax and (2) its potential acceptability as an escape from the legal repercussions of exclusionary zoning. The above two reasons either directly or indirectly affect, or to a large degree become, the causative agents which spur any type of sustained local interest in PUD. Thus it must be realized that any restructuring of a state's financial system which would deemphasize the property tax as its prime revenue source, or any court decisions failing to limit severely any attempt at exclusionary zoning, would cause a lessening of the current stature which PUD now so visably enjoys (2,9).

It is in these two areas which a large body of literature is building. Those in the field are increasingly interested in the economic impact of PUD and whether or not a range of income

groups may be served via this housing vehicle. This is the fashionable area for future PUD literature.

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THEORETICAL ORIGINS

Introduction

The "planned unit" process of land development is often confused with other less sophisticated techniques and as a result, frequently misunderstood. PUD IS THE NATURAL EXTENSION AND MELDING OF A MATURING BUT HERETOFORE SEPARATE SYSTEM OF LAND USE CONTROLS.

PUD is a derivative of the most current ideas in planning which call for a program-oriented, mid-range plan, legally binding upon participants. PUD also follows from modern zoning continuing a trend towards flexibility in land use, thereby emphasizing a mixture of land uses, unit development and wide ranging administrative discretion to local officials. Finally, PUD also continues the movement away from preset regulation in subdivision control fostering new interest in the municipal developer bargaining process and as a result, offering a more streamlined platting process and potentially larger developer profits in exchange for increased municipal site plan review powers and a procedural mechanism for assembling usable amounts of contiguous open space. PUD even goes one step farther, however, for the first time it represents a land use control that will enable a municipality to control effectively, both the tempo and sequence of an area's development (6).

PUD Features Derived from the Master Plan

A Physical Approach to Social and Economic Ills

The current status of master planning as seen in the developing history of the master plan, divides itself into two discernable

forms each basically along locational lines and both outmoded. The one involves high growth suburban and exurban areas where the master plan has retained its long range physical origins and has been pushed into the background. This peripheral master plan, largely supported by non-local intragovernmental funds, today frequently gathers dust on a shelf and comes out of retirement decennially seeking additional funding for its updating (10,15).

The second involves the urban areas where most of the growth is in the form of redevelopment. Here the plan has attempted to embrace the various theories of successive planning "eras" without due consideration to whether specific application of the theory could be meaningfully and realistically incorporated within the confines of planning's structure. The plan has become "fragmented" and unmanageable consisting of scrambled data, conflicting objectives and bits and pieces of plans that are an increasingly incompatible mixture. If the suburban version of the master plan is criticized for its narrow physical view and limited application, the urban variety, more global in nature, falls on its face in its inability to effectively control any single aspect of growth change (10).

The typical local PUD ordinance,* reacting to both situations, attempts to engage wider substantive concerns yet express them in realizable, physical development proposals. PUD, although desirous of leaving its mark on the social environment does so

* Most of the excerpts taken as representative of PUD ordinances are derived from the East Windsor, New Jersey Ordinance, adopted locally in 1967.

strictly through the employment of improved physical land use measures. It contains no set provisions for the establishment of neighborhood bargaining agents other than those which already exist within the aegis of local government; there are no required indoctrinational programs which the new tenants must undergo; nor is there a search for community leaders or attempts to institutionalize their political structure to assure "equal apportionment of any local pie."

While recognizing that the primarily peripheral development problems involved here are somewhat less intense than core area issues, still the approach of the PUD ordinance is nonetheless a definite departure from the physically-narrow, subdivision or zoning approach to the problems of developing areas. In the East Windsor ordinance, for example, a planned unit development must defend itself, either initially or subsequently with a statement as to: (12)

"The relationship, beneficial or adverse, of it to the neighborhood in which it is to be established."

"Estimates of its social characteristics such as the size and composition of future population in terms of probable family sizes as occupants of the several dwelling unit types; their need for public services and protection, for recreational facilities and for commercial and professional services; anticipated rental scales, etc."

Specific provisions of the PUD ordinance base their approach on a necessary streamlining of the physical land development process as a prerequisite to dealing with the social problems attendant to this development (12).

The purpose of the East Windsor PUD ordinance is..."to reflect changes in the technology of land development so that resulting economies may enure to the benefit of those who need homes."

"The Township of East Windsor desires to take full advantage of modern design, construction, building and planning methods as will: strengthen and sustain its economic potentials, establish appropriate patterns for the distribution of population, commerce and industry in a variety of accommodations which are free and compatible with a modern way of life..."

This type of planning is not new but basically follows from Melvin Webber's policy statement to the planning profession in 1963 wherein, he states that the city planner's responsibilities relate primarily to the physical and locational aspects of development and improvements in these areas will indirectly bring benefits to the city's residents (25).

More sophisticated planning boards now require a developer when submitting a large subdivision plat to produce a school impact statement as well. The master plans of the inner suburbs now frequently call for physical recommendations based on "an analysis of social and economic needs." Finally, a current recommendation or a Model Land Development code by the American Law Institute calls for the plan's physical recommendations to be cast in a problem solving format--"A process that moves away from deficiencies as well as toward ideal conditions (2)."

Legally Binding Through Adoption by the Local Governing Body

The master plan has been criticized for not representing official public policy by not having the legislative body officially adopt it. This has probably been the most consistent criticism of the master plan throughout its history. Adoption by the governing body is a move which planners have approached more with platitudes than with measurable action (14).

The PUD ordinance however, is an area plan which functions as a regulatory tool to implement the master plan for a specific section of the community. In a strict sense this statement is probably more true of the PURD than it is of the PUD ordinance. Employing a PURD, you enjoy the heretofore unavailable planning luxury of positioning small commercial facilities within local neighborhoods in basic conformity with the master plan. In a PUD, the regional commercial or regional industrial use brought within a less intensive land use area appears in somewhat of a conflict with the specific provisions of the master plan. Regardless of which mode of planned land development is employed however, the basic fact remains that the local planned development ordinance does become a part of the community's regulatory controls, and since upon project approval it results in an official change of the zoning map, it also becomes binding on private developers. In this broad sense it is the official policy of the (governing body) municipal government.

Yet the PUD ordinance does not represent the entire state of the art, in terms of having the master plan or part of it adopted by the local government. This procedure is currently a recommendation of several of the states' newly proposed land use laws: (3,29).

Connecticut

"We believe that communities desiring to exercise more extensive land use controls should be required to adopt development policies in the same way that the land use regulations are adopted, and in doing so, they should explain the reasons for current community action that affect development as well as any programmed future actions."

New Jersey

"The proposed New Jersey Land Use Planning and Development Act requires the municipality to have a master plan prepared by the planning board and adopted by the governing body in order to use zoning, subdivision-regulations or official map powers."

Dealing With Current Problems Within a Realistic Time Schedule

The master plan has further been criticized for its inability to deal with current problems or to focus its attack within realistic time horizons. The PUD ordinance as to this aspect is an updating of this branch of the land use system. In this vein it is really nothing more than a "middle range bridge" filling an obvious gap in the existing land use planning process (23).

The development proposal, required by the PUD ordinance is a programmed document calculated for no longer than a mid-range, i.e., 10 to 15 year, time period. In many instances its span is much shorter, frequently in the range of 5 to 8 years. The proposal contains specific targets in terms of: number of residential housing units, gross square footages of industrial and commercial uses, amounts of common open space and inclusive recreation facilities and finally, necessary municipal services and local public utilities (12).

"Application for Planned Unit Development shall set forth the projected schedule for development and approximate times final approval would be requested."

"At the public hearing the applicant shall present evidence as to: ...time factors and sequential development potential..."

If a PUD ordinance is "on the books" and is being actively pursued by a developer, the community is assured of a planned and predetermined product at the end of the development period or the developer will not be allowed to continue. If nonresidential percentages of the PUD ordinance are set too severe, developer interest, of course, will be nil and planned development slow in forthcoming. Handled correctly, however, the ordinance is definitely a "throughput" mechanism; if it were not, developers would not attempt to pursue it.

In the area of currency of the plan and its shortened time horizons, the land use system in updating itself has fostered several precursors to planned unit development. The capital improvements program, the Workable Program and the Community Action Program are all action programs in substantive areas which the master plan once addressed dormantly. When specific results were desired there was a turning away from the master plan toward a more topical, short term delivery mechanism. In terms of developing large scale, peripheral areas there has been a similar turning to PUD.

In summation, PUD's derivatives from the influence of master plan on land use matters is a procedure whereby pertinent and realizable problems are addressed in a legally-binding program of mid-range objectives. In visual perspective it takes the following form:

<u>Land Use Element</u>	<u>Known Deficiency in Existing System Element</u>	<u>Potential Improvement in PUD</u>
Master Plan	Long Range Plan	Mid-Range Program
	Not Adopted and Not Followed by Local Legislative Body	Adopted and Observed by Local Legislative Body
	Irrelevant Problems; Unrealizable Goals	Pertinent Problems; Realizable Objectives

PUD Features Derived From Zoning

A Mixture of Land Uses:

Traditionally zoning is criticized for dividing a community into districts emphasizing the explicit segregation of uses rather than the mutually re-enforcing, compatibility of uses. Extreme differences were noted between districts wherein residential uses typically abutted those of heavy industry with no transitional "buffer." If a buffer was employed at all, it was more than likely a more intensive, residential land use. In a related fashion, residential districts were termed "sterile" for their inability to offer necessary convenience goods and community facilities of a non-residential nature. Criticism of this approach has lead in part to the adoption of PUD ordinances which emphasize both a mixture of dwelling types and land uses as part of the planned development concept. i.e., (12).

"In order that the public health, safety morals and general welfare be furthered in an era of increasing urbanization and of growing demand for housing of all types and design; to provide for necessary commercial and educational facilities conveniently located to such housing; to provide for well located, clean, safe, pleasant industrial sites involving a minimum of strain on transportation facilities...so that greater opportunities for

better housing and recreation, shops and industrial plants conveniently located to each other may extend to all citizens and residents of this Township... the following ordinance is enacted pursuant to the authority granted by the Municipal Planned Unit Development Act (1967)."

However, some advocates of PUD in their zeal to see this concept become a reality have often disregarded zoning's individual updating of its admittedly negative features. This updating has appeared on several fronts.

Grouping shopping districts by service area is a first step in returning to the neighborhood concept. Land is reserved for regional, community and local shopping clusters with specific restrictions based on market experience, on what types and classes of business are to be allowed at each level.* Local shopping districts with sufficient provisions for off-street parking, height restriction, traffic control and vermin/odor reduction are now frequently found surrounded by residential areas. Designated regional clusters, once the market develops, are also encouraged by attempts to limit fragmented growth in adjacent areas (13).

Industrial performance standards, the suburban "garden factory" and research zones are reducing the journey to work by bringing industry closer to residential areas. Performance regulations are phrased in terms of the permitted amount of nuisance which may be emitted in each district, thereby allowing a conscientious (emission, congestion-reducing) industry to be rewarded by an improvement in environment. Garden factories and

* This is a difficult problem both from a planning and conceptual aspect. Locally, those stores which cater most to daily needs in some cases produce the most nuisance.

research facilities are usually inoffensive and provide ideal suburban ratables. With sufficient setbacks, off-street parking and height regulations, their location in zones adjacent to residential areas is a frequently advocated community goal (4).

Extended interpretations of related uses and home occupations in residential areas are assisting to reduce the "sterility" of local neighborhoods. In the former case, in at least one residential zone, schools, churches, day nurseries, hospitals, sanitariums, and recreation facilities are permitted by right or may enter via special permit.*

In the latter case physicians' and dentists' offices, artists, music teachers and veterinarians facilities usually receive the same favorable treatment.**

Finally, trends have developed in recent ordinances which provide for many more types of districts than was formerly the practice, i.e., historic zones, open-land zones, planned districts, educational districts, etc., reflecting a desire to deal with as many specific situations as possible, but still eliminating the necessity for widespread discretion (13).

* Colleges, private schools, swimming clubs, boarding houses and nursing homes in some cases have not received the same favorable acceptance.

** Real estate broker's and insurance agents offices; dance studios, barber shops and beauty parlors in most cases have not received the same favorable acceptance.

Unit Development

The single lot development mode is another oft-criticized feature of current zoning practices. Critics usually line up in support of an argument which states that when zoning was originated development was taking place on a lot-by-lot basis and the emerging control fashioned itself after a time-constricted development mode. From this point forward improvements in development techniques were not followed by innovation in zoning techniques thus rendering the zoning vehicle inappropriate for that which it was intended to control.

Another argument put forth as contributing to the "dominant" single lot focus is zoning's: (16)

- 1) allowance for review of planning decisions at the (capricious) instance of neighboring owners, and
- 2) preregulation and automatic disposal features, which by construction limit creativity.

The planned unit reaction to this was again to opt for an improvement over previous techniques and include within its framework provisions for: creativity of design, efficiency in land utilization, and unified development control (12).

"Planned Unit Development...is an area of land controlled by a landowner, to be developed as a single entity..."

"Plot and lot sizes and dimensions and structure heights and locations thereon may be freely disposed and arranged in conformity to the overall density standards herein, and to the conditions of the comprehensive plan therefore, the general features and design of which shall be approved by the Planning Board."

"Minimum lot size or frontage, minimum percentage of lot coverage are not specified herein, although the Planning Board may be guided by standards set elsewhere herein for comparable conditions and by common good practice."*

It must be realized that all zoning practices today are not what were prevalent during the mid-thirties. The regulation of structures under zoning has made notable achievements since its initial categorization and resulting stigma. Although many ordinances retain some of the older controls, especially in low density residential areas, it is now customary to allow a greater latitude in design and layout through the introduction of several more modern techniques.

The Floor-Area Ratio (ratio between the total floor area of the building and the ground area of the site) permits a designer to choose from several options, varying height of building and lot coverage, in developing a particular plot (13).

Nonvariable yard requirements have been eased through such techniques as maximum lot coverage/minimum unobstructed open space requirements cluster or density zoning and finally, the Land Use Intensity (LUI) Ratio. In the first case the only yard specifications which are made are those requiring maximum square foot requirements for a structure covering a lot and minimum requirements for continuous open space respectively (4). Cluster

* A few minimum requirements as to distance between structures, access to thoroughfares, etc., are included primarily for utility, safety or fire hazard reasons. There are no rigid lot lines however, and clustering is not only permitted but encouraged. Further, the developer is encouraged to "containerize" the community by the creation of functionally self-sufficient neighborhoods.

or density zoning merely specifies a number of permissible dwelling units per acre which may not be exceeded by the developer, yet within limits (usually only to comply with existing safety regulations), he is free to both place and arrange structures, and select type of dwellings in the development of his lot (26). The Land Use Intensity Ratio follows the same principle as cluster zoning, however, it is more precise and considers more variables. LUI modifies the Floor Area Ratio in establishing total permitted development intensity at a particular point according to use, location and growth stage of the land parcel (24).

Incentive zoning is also being attempted primarily in urban areas, in which developers are allowed to exceed specified intensities of development if they incorporate within their project certain open space or aesthetic design features (plazas, arcades, terraces, etc.). Thus Floor Area Ratio (and consequently rentable space) may be increased for a builder who is willing to include an "eye catching," non-standard feature at ground level or who will provide light and air permitting set backs at specified floor levels (5).

Increasing Administrative Discretion

The final critique of zoning-past falls under the general heading of tolerable limits of administrative discretion. This is the most valid criticism of zoning, yet the one most difficult to reconcile.

The current system of zoning has as its core the idea that government must act in a general and impartial manner to avoid discrimination, favoritism and political pressure. Thus it is

predictable that zoning via its barristers had made only reluctant moves to allow greater administrative freedom to pervade the land use bureaucracy. They argue that there is a lack of confidence in the lay board's ability and resultantly, a reluctance to slip away from the rule of law in order to grant major land use powers to these appointed officials (27).

Apparently, however, piecemeal development and a deteriorating landscape have caused others in the field (again mostly planners) to forsake "unfound" caution and advocate that increasing administrative control be available to a single and powerful governmental land use body (17).

PUD advocates moved quickly in strong support of the consolidation of administrative procedures in one central agency, preferably the planning board. Although the New Jersey Enabling Statute was reluctant to include provisions for a developer to request a Planned Unit Development directly from the planning board, a local ordinance (East Windsor Township) which actually was being formulated prior to the State Act has subsequently given the planning board this power. The planning board currently has the authority to grant or deny the PUD application and thus completely rezone the tract in question without resort to legislative action (29).

"...The procedures and approvals provided herein for tentative and final approval of a plan for a Planned Unit Development and applications for such tentative and final approval shall be in lieu of all procedures and approvals specified in Sections _____, _____..."

"Upon a finding that the plans and specifications for the proposed development of the section or stage conform to the above conditions, the Planning Board shall so inform the Administrative Officers as are charged with the issuance of permits for the construction of utilities or structures, etc."

"Upon substantial completion of any section... the Planning Board may require a report and review of the status, character and conditions of it..."

"A plan, or any part thereof, which has been given final approval by the Planning Board shall be so certified without delay..."

As mentioned previously zoning has not rigorously sought a consolidation of its administrative functions (enforcement, appeal amendment and review), which would place wide discretionary power in a single agency. The only attempt has been possibly to increase the scope of the enforcement process by employing measures which would provide additional information and an improved talent bank to this functional area. Appeals, amendments and review however, have been left to the board of adjustment, legislative body and the courts, respectively (14).

In the enforcement function of administration, the traditional task of the building inspector has been updated in some municipalities by (1) the creation of a zoning administrator, and (2) the positioning of his duties within the planning department (14).

The zoning administrator, in areas where more sophisticated planning techniques are influencing municipal zoning, attempts to improve upon the existing system by creating a position senior to the building inspector wherein requests for permits would be referred and checked for compliance with the zoning ordinance in matters other than building construction and alteration (13).

Placing the enforcement duties within the planning department ensures that zoning proceeds in accordance with the master as well as the comprehensive zoning plan, and that community objectives that are contained in the former document and perhaps omitted in the latter, receive their proper input into the zoning scheme (13).

In summation, then, as zoning has attempted to update its own mechanisms it has strongly influenced a derivative element, PUD. PUD takes from the zoning controversy a means of providing (1) a mixture of residential, commercial and industrial land uses, (2) unified development control on a greater than single lot basis, and (3) consolidated, administrative review of specific development proposals. In visual perspective, its derivatives take the following form:

<u>Land Use Element</u>	<u>Known Deficiency in Existing System Element</u>	<u>Potential Improvement in PUD</u>
Zoning	Segregation of Uses	Mixture of Uses
	Single Lot Focus	Unit Development
	Present Regulations	Administrative Discretion

PUD Features Derived From the Subdivision Process

Site Plan Review

As evidenced previously with zoning most "standards" within the subdivision code are preset. In many cases they are specifically geared to the most common land subdivision, i.e. the single family residential dwelling unit located on a flat and unblemished terrain. When these regulations are applied in "non-normal" residential situations (rugged terrain, clustered dwellings, odd-shaped lots) they either "don't fit" at all or "wear rather unevenly" (13).

This same reasoning applies to the subdivision of non-residential uses, for example, regulations may require sidewalks which have neither functional nor safety value or an overly severe roadbed for research industry or local shopping which might well be appropriate for heavy industry or a regional commercial center (13).

A third problem of subdivision approval involves lack of reaction to changes in technology. For example, there may be no reconciliation of the presence of self-contained sewerage; a similar lack of linkage may exist between numerous sources of artificial light/air-conditioning and a yard requirement as the natural producer of these quantities; or finally there may be no recognition of mass building methods and improved underground wiring and their effects on construction and development costs (13).

A larger ongoing site plan review function has been urged by planners and lawyers alike as a step away from the continued decadence of even some of the more recent subdivision ordinances. Although site plan review is not an uncommon ancillary element in conventional control, PUD, since most of its features are not self-executing, raises the usage of this function measurably. The site plan review aspect of subdivision control, emphasized in PUD both controls the developer who does not deliver the "full potential" of his preliminary plan, and eliminates a major deterrent to innovative land development through its allowance of increased administration land use discretion.

The local PUD ordinance with specific provisions relating to site plan review attempts to "build-in" sensible and current site supervision: (12)

(Purpose):..."to provide a procedure which can relate the type, design and layout of residential, commercial and industrial development to the particular site."

The grant of said approval shall be by written resolution...setting forth....the physical design of the plan and the manner in which said design does or does not make adequate provision for... public services, traffic control and further the amenities of light and air, recreation and visual enjoyment.

It should be realized however, that PUD has not itself fostered site plan review. Site plan review is a growing part of subdivision regulation. PUD has merely viewed this area of regulation, recognized its value, and synthesized it within its means of land use control (20).

A Streamlined Platting Procedure

The conventional platting procedure, works against large scale development for several reasons. Before a developer can receive a building permit and offer realty for sale he must acquire final plat approval for his entire project - a very expensive process.

In most cases this requires that he undertake detailed engineering studies and surveys, prepare a site plan and post bonds for public improvements (16).

The second limitation of the current platting procedure is a lack of assurance that while the project is underway a municipality will not noticeably alter its existing subdivision requirements.

The "assured" period if it exists at all is usually now so short that a municipality may impose a substantially new set of development requirements. One can see that with an initial cash outlay of four to six times what is required for conventional development, a PUD developer cannot risk a change of heart by the municipality that would cause him to terminate the project (17).

Under the ULI Model Act for planned unit development and also via New Jersey's enabling legislation the developer is allowed to file a tentative plan, proceed in stages and given assurance that the municipality's standards will not change during the period between tentative and final plat approvals. This is again reflected in provisions of the local East Windsor, New Jersey PUD ordinance: (12)

..."Application for a planned unit development... shall be considered an application for tentative approval. ...tentative and final approval shall be in lieu of _____, _____, _____, Chapter 433 of the laws of 1953 Revised Statutes..."

"As a condition to tentative approval the Planning Board may permit the implementation of the plan in whole or in sections."

"If tentative approval is granted...there shall be set forth the time within which an application for final approval of the plan shall be filed for... in the case of a development over a period of years... not less than six months."

Again a streamlined platting procedure is not a new phenomenon in the land use literature. There are definite similarities between what would be currently needed for planned unit developments and a procedure recommended on several occasions for large scale commercial development (18).

A Means of Acquiring and Maintaining Common Open Space

Traditionally the preservation of open space for its recreational or landscape value has been the function of federal and state rather than local governments; the policy has always been to acquire the areas outright rather than protect them by other methods (11).

The requirement of dedication at subdivision approval of developer's land for parks, schools, etc. is firmly established. While this system is accepted it hardly seems efficient since land garnered via this procedure is often fragmented and increasingly difficult to maintain.

Clustering of dwelling units in order to obtain more open space has also been widely accepted, from both legal and planning standpoints as a viable method of preserving the landscape. Subdivision regulations have not to date, effectively dealt with the administration of the resultant open areas of this practice.

Yet local planned unit development ordinances contain provisions for both the acquisition and maintenance of open space: (12)

..."Open spaces such as parks, recreation areas, golf courses, public institutional and public school sites, playgrounds, drainage or other ways shall be provided at a rate of not less than 12 acres of open space for every 300 dwelling units. Not less than 25 percent of the total gross acreage...shall be vacant ground and available to the Township or other public ownership for school sites, parks, drainage ways or other purposes acceptable to the Township Committee..."

..."The landowner shall provide for and establish an organization for the ownership and maintenance of any common open space, and such organization shall not be dissolved nor shall it dispose of any common open space..."

It should be noted though, that neither the desire for open space nor its means of acquisition can be attributed exclusively to PUD. Subdivision regulations have been used as the vehicle to win original court approval. David Heeter in his summary work of the more current land use studies, notes that means for setting aside of open space by local government is a major recommendation of each of the subdivision elements of these studies.

In summation, oft-touted deficiencies in subdivision control have provided the impetus to generate a means of dealing with a necessary increase of the site plan review function, a reduced platting requirement for large scale development, and the acquisition and maintenance of common open space. Yet as it has been demonstrated these measures in varying degrees existed separately within the existing land use system. PUD does not initiate, but rather evaluates and carefully selects efficient means of land use control. Subdivision control's contributions are summarily displayed in the following diagram:

<u>Land Use Element</u>	<u>Known Deficiency in Existing System</u>	<u>Potential Improvements in PUD</u>
Subdivision Control	Automatic Disposal - Limited Design Control	Necessary Site Plan Review
	Fractional and Useless Open Space Publicly Maintained	Usable Open Space. Privately Maintained
	Turgid Platting	Streamlined Platting

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THE DEFINITION OF PLANNED UNIT DEVELOPMENT:
AN EXTENSION OF ITS THEORETICAL ORIGINS

In any analysis of new land development mechanisms the discussion inevitably must get around to, and occasionally never off of, a precise definition of the process under consideration (5). In the case of planned unit development (PUD), due to the legal battles which had to be fought for the concept's implementation, most definitions are limited, bland and very often cast in negative terms. Because the concept emerged slowly and had to be meaningful, both to administrators and to the reviewing courts, seldom do the definitions follow the more colorful, perhaps vague, literature of the field. Thus, at this point in time there are multiple definitions of planned unit development conjured up by various authors each discussing PUD as if their definition would become a part of forthcoming enabling legislation. Although there are many definitions, the concept is still undefined.

If one looks closer, however, there are persistent elements within this disparate grouping of definitions which consistently reappear and are not too dissimilar from those elements identified previously, which PUD has retained in its emergence from the existing land use system. Exhibit 1 briefly summarizes these latter elements.

One of the early definitions of planned unit development (1965) is that offered by Babcock, McBride and Krasnowiecki in the Model State Statute: (7)

EXHIBIT 1

PUD FEATURES DERIVED FROM THE EXISTING LAND USE SYSTEM

Elements of the Land Use System	PUD's Improvements in Its Emergence	
	Known Deficiency in Existing System Element	Potential Improve- ment in PUD
Master Plan	Long Range Plan	(1) Mid-Range Program
	Not Adopted and Not Observed by Local Legislative Body	(2) Adopted and Followed by Local Legislative Body
	Dealt with Irrelevant, Unmanageable Problems Seeking Unrealizable Goals	(3) Deals with Pertinent Problems Seeking Realizable Objectives
Zoning	Segregation of Uses Emphasizing Disharmony	(4) Mixture of Uses Emphasizing Compatibility
	Single Lot Focus - Incremental Development	(5) Unified Control - Unit Development
	Preset Regulations - Disparate Municipal Administration	(6) Administrative Discretion - A Single Municipal Land Use Body
Subdivision Control	Automatic Disposal - Limited Design Control	(7) Necessary Site Plan Review - Extensive Design Control
	Fractional and Useless Open Space Contributions Deeded to Municipality for Public Use	(8) Significant Open Space Maintained by Residents for Private Use - Special Usable Sites Dedicated for Public Use
	Formal One Shot, Platting Procedure, Extensive Expense via Utility Commitments by Developer	(9) Staged Platting Producing Self-Contained Units; Limited Expense to Developer

"(PUD)...is an area of land controlled by a land-owner, to be developed as a single entity for a number of dwelling units, the plan for which does not correspond in lot size, bulk or type of dwelling, density, lot coverage and required open space to the regulations established in any one residential district created, from time to time, under the provisions of a municipal zoning ordinance enacted pursuant to section ____ of Chapter ____."

Compared to Exhibit 1 this definition is limited in scope, i.e., only covering areas (5)*and (6)*of the derivative elements; and negative in impact, utilizing half of the definition to establish the fact that the proposed ordinance is applicable to a type of development not covered anywhere else in a municipality's zoning ordinance.

Somewhat later, Daniel Mandelker restating points (5)*and (6)* added to this basic definition the concept that PUD indeed may include a mixture of land uses (4*): (8)

"Planned development regulations mark a substantial departure from tradition. First, they apply to entire developments rather than to individual lots."

"Second, planned development regulations abandon or substantially modify the traditional, self-executing form of zoning regulation."

"Finally, planned development regulations may also represent a partial or total abandonment of use districting."

New Jersey's State Enabling Statute on this principle modified the Model Act to include a statement on both commercial uses (inferred in the Model Act) and industrial uses (excluded from the Model Act): (12)

"PUD is an area of land controlled by a land-owner, to be developed as a single entity for a number of dwelling units, including commercial and industrial uses, if any,..."

The Department of Housing and Urban Development, The Regional Planning Council of Baltimore, Maryland, and The Advisory Commission on Intergovernmental Relations subsequently introduced the idea that planned unit development was to proceed in accordance with a plan (1)*: (6)

"(PUD is) land under unified control planned and developed as a whole according to comprehensive and detailed plans...."

"The Planned Unit Development...is a development... which follows a plan prepared under general standards which may be different from those which would have been applicable to the site."

"...large scale development constructed under single or unified management following a fairly precise inclusive plan...."

Roger Scattergood in a report to the New Jersey Federation of Planning Officials and again, The Department of Housing and Urban Development in their technical standards for PUD's, recognize that both the provision and control of open space (8)*are also constituent elements of most planned unit developments: (1)

"Another provision often found in PUD regulations is the requirement that common open space be dedicated for use of the neighborhood and not necessarily the general public."

"(PUD) has privately owned common property comprising an essential or major element of the development, such as an internal park network abutting homesites in a super-block or cluster subdivisions."

Isadore Candeub, in one of the most recent attacks on the master plan sees PUD as one of several mechanisms which has risen to make the lethargic plan work. As such, there should

* These numbers indicate derivative elements found in Exhibit 1.

be a requirement that the "new" master plan and PUD ("a multiple stage site review process" (7)* both "action" plans, must be approved by the governing body (2)* if they are to represent public commitments to action which cannot be waived when the occasion warrants:(4)

Finally, the ASPO report for Connecticut, drawing heavily upon the Model Act, states that an important aspect of PUD which must be considered is the fact that PUD if it is sufficiently large, can be developed in stages (9)*, thereby not harnessing the developer with an initial financial drain and assuring him that the community's requirements will not change during later stages of development (2).

An additional element which is very much a part of planned unit development, yet is not a derivative of the existing land use system, is PUD's ability to control a segment of a municipality's tempo and sequence of development. The ability to maintain a balance between various uses of land; to control development to keep pace with the growth of municipal facilities and services; and finally, to restrict development from certain areas until others are filled has never been adequately achieved under the previous system (3).

The last nonderivative element which must be mentioned is that any true PUD containing a mixture of land uses, most likely will have one of its non-residential elements develop as a regional attraction. The concept of fiscal packaging which PUD is being sold by dictates larger and larger proportions of inclusive nonresidential land uses. The balance in

New Jersey frequently calls for 20 to 40 percent of the land area to be put in industrial or commercial uses. At these percentages neither the local-commercial nor certainly the local-industrial can be considered nonregional in nature.

Thus from the discussion which has transpired, it is inevitable that this article also arrive at a definition of a planned unit development.

PLANNED UNIT DEVELOPMENT IS A MEANS OF LAND REGULATION WHICH PROMOTES LARGE SCALE, UNIFIED LAND DEVELOPMENT VIA MID-RANGE, REALIZABLE PROGRAMS IN PURSUIT OF PHYSICALLY-CURABLE, SOCIAL AND ECONOMIC DEFICIENCIES IN PERIPHERAL LAND AND CITYSCAPES. WHERE APPROPRIATE THIS DEVELOPMENT CONTROL ADVOCATES: (1) A MIXTURE OF LAND USES, ONE OR MORE OF THE NONRESIDENTIAL USES BEING REGIONAL IN NATURE, (2) THE CLUSTERING OF RESIDENTIAL LAND USES PROVIDING COMMON AND PUBLIC OPEN SPACE, THE FORMER TO BE MAINTAINED FOR AND BY THE RESIDENTS OF THE DEVELOPMENT, (3) INCREASED ADMINISTRATIVE DISCRETION TO A LOCAL PROFESSIONAL PLANNING STAFF AND THE SETTING ASIDE OF PRESET LAND USE REGULATIONS AND RIGID PLAT APPROVAL PROCESSES, AND FINALLY, (4) THE ENHANCEMENT OF THE BARGAINING PROCESS BETWEEN DEVELOPER AND MUNICIPALITY THEREBY STRENGTHENING THE MUNICIPALITY'S SITE PLAN REVIEW FUNCTION AND CONTROL OVER TEMPO AND SEQUENCE OF DEVELOPMENT IN RETURN FOR POTENTIALLY INCREASED PROFITS AVAILABLE TO THE DEVELOPER AS A RESULT OF LAND EFFICIENCY, THE EMPLOYMENT OF MULTIPLE LAND USES AND INCREASED RESIDENTIAL DENSITIES.

While it is frequently said that "PUD can take on a variety of forms, ranging from a small cluster of houses combined with common open space to new towns like Reston, Virginia with thousands of inhabitants and a wide range of varied land uses," (9) utilizing the definition stated above it is clear that this article does not consider a simple residential cluster nor a single shopping center, office or industrial park as a planned unit development. Finally, neither does it consider a new town developed in accordance with standard zoning regulations and subdivision controls a legitimate PUD. This definition, drawn from the concept's origins, is strict in its delineation, hopefully as a step away from the current practice which classifies any non-standard development as a planned unit development. This is definitely not the case, the developing literature attests to this fact.

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THE EVOLUTIONARY FRAMEWORK

Innovational Linkages:

The advantages of planned unit development follow basically from its definition and origins. PUD offers a mid-range program of land development which is legally recognized and thus methodically followed by the local governing body and developer alike.

Development is not cast in advance by the local regulatory ordinances but awaits an institutionalized bargaining process between developer and planning board. The municipality receives sorely needed design and development control within the specified development area in return for potential developer gains in the form of more intensive land uses, greater land efficiency and increased residential densities.* The development supports a variety of residential dwelling types, common open space for the use of its residents, inclusive shopping and employment facilities and pre-planned schools, recreation areas and local municipal services.

To these considerations are usually added the as yet, unrealized advantages of curtailing urban sprawl and moving lower income groups in close proximity to the growing suburban job market (2). Roger Scattergood and Daniel Mandelker aptly sum the existing literature.

* Taking the "Twin Rivers" example again, in return for the community being able to plan for population growth that would potentially double its population and additionally impose design control on over 700 contiguous acres, the developer was allowed to build approximately three times the number of units, that he normally would have derived from the tract and also develop substantial inclusive industrial and commercial areas.

PUD is advantageous as it fosters:

- | <u>Scattergood</u> (7) | <u>Mandelker</u> (6) |
|---|--|
| 1) Improved design with greater variety. | 1) Improved design. |
| 2) A wider choice of housing available to more people in one community. | 2) Mixing of residential building types. |
| 3) Better use of open space permitted by the economy of cluster. | 3) More useful open space |
| 4) More convenient shopping facilities. | 4) Increased density. |
| 5) Economy in space for streets and in lengths of utility, water and sewer lines. | 5) Lower costs. |

The disadvantages of planned unit development posed by Norman Williams, Jr. and others, center not around the concept itself, but rather on the ability of the participating agents to adequately embrace the conceptual changes which PUD actually represents. Specific criticisms are directed to: (9)

- 1) the planning board for its continued lack of development sophistication;
- 2) the governing body for (a) the creation of a bargaining process which excludes the ultimate consumer, (b) the possible misuse of PUD legislation to forestall all local growth and (c) their severe economic requirements necessitating a middle class housing vehicle which continues the existing pattern of center-city outmigration;
- 3) the developer for his continued embracement of long range management tasks too sophisticated for his organizational structure and too prolonged for his limited cash flow.

Conceptual Diffusion and Adaptation

Notwithstanding a primary vacant land and commuted or recreation/retirement requirement for peripheral areas the PUD/PURD development concept offers a variety of options for other areas. In suburban areas PUD allows moderate-sized tracts of land, which may separate such disparate elements as highway commercial development and quiet residential areas, to be developed employing mixed land uses in a way which provides both an acceptable transitional mechanism and maximum utilization of the particular site.

Additionally, in urban areas PUD provides a means of developing smaller areas of land into multiple land uses usually unavailable in conventional zoning. This process is further unencumbered by the bureaucratic delays currently hampering traditional modes of center-city land development.

PUD can thus serve as a potentially large generator of housing. It is applicable in many instances and in most geographic areas. A realistic appraisal of PUD acknowledges that the concept's local acceptability, especially in fringe areas, is tied to its employment of multiple land uses which allows residential development to proceed with minimal impact on the local property tax. Additionally, PUD may be viewed as an acceptable alternative to large lot, single family zoning and a possible escape from the legal repercussions which may arise therefrom.

Notwithstanding the concept's innovation and flexibility in land use matters, the above two reasons either directly or indirectly affect, or to a large degree become, the causative agents which spur any type of sustained local interest in PUD. Thus it must be realized that any restructuring of the state financial system which would deemphasize the property tax as the prime revenue source, or any court decisions failing to limit severely any attempt at exclusionary zoning, would cause a lessening of whatever current vogue which PUD now enjoys.

Development Antecedents

While it is current fashion to trace the American new community movement, i.e., the large scale pre-PUD experience typified by Reston, to British origins, this has been recently cast by Max Wehrly as somewhat incorrect, and rightly so. (8). Wehrly makes the point that the location of the industrial elements of British new towns were publicly dictated in advance, thus assuring a threshold economic base. American new communities controlled by the private market had to attract industry often after the residential elements were constructed and occupied rendering them, from a municipal standpoint, at an economic disadvantage from their outset. More correctly, the PUD should be traced in this respect to the British experience, for it too has a relatively assured industrial base. While industrial location is not preset by a public "industrial commission" necessary industrial acreage percentages must be adhered to and a residential/nonresidential balance maintained before sustained development is permitted.

It should be realized, however, that most current PUD or PURD activities, linked frequently with eccentric or idealistic antecedents of the past, evolved more directly from unrestrained private market forces articulated by unplanned government policies and are manifested in the hard realities of suburban expansion. The precursors of this movement are the Levittowns and Park Forest's which emerged as whole communities within the orbits of large metropolitan center after World War II (1). This was the beginning of the "tooling up" of large organizations and the accompanying sophisticated merchandising and packaging methods necessary to move housing in quantity.

The legal origins of planned unit development were not derived from the original suburban construction form, i.e., the single family home, but rather from its successor the garden apartment and the accompaniment to both, the suburban shopping center (5). If anything the British influence may be noticed here - in design and layout.

In the case of garden apartments the developer received specific approval usually from the governing body, to bypass specific lot and yard requirements if: (1) the type of land use introduced into the area was basically the same, (2) the height limits of the district were not exceeded, (3) the overall density remained essentially similar, and finally (4) the required setbacks were observed on tract boundaries as ICMA notes: "the next logical step was the extension of variable density provisions to subdivisions thereby waving rigid lot and yard requirements as had been done in low-rise apartment complexes" (5).

A less formal platting procedure somewhat analogous to what the PUD currently undergoes was the result of recommendations by ASPO for shopping center rezonings in 1959. This three stage approval process allows the developer to come in with an inexpensive concept or sketch plan for approval by the legislative body. If not approved at this stage little is lost; if approved, more sophisticated preliminary and final plans must be presented to the planning board before construction can begin. According to Mandelker, in planned development this early legislative review is essential: "The developer needs early assurance that his project has been approved in principle, so that he can safely proceed with the expensive preparation of more detailed plans" (6).

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3. American Society of Planning Officials. Shopping Center Zoning: Part II (Chicago, Illinois: American Society of Planning Officials, Planning Advisory Service Report #129, 1959).
4. See Bell Christopher, Jr. "Controlling Residential Developments on the Urban Fringe: St. Louis County, Missouri" Journal of Urban Law (Vol. 48-2, 1971) 409-447.
5. Goodman, William I., and Eric C. Freund (eds.). Principles and Practice of Urban Planning (Washington, D.C.: International City Managers Association, 1968).
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THE PUD PROCESS: A SERIES OF GUARANTEES

Generalizations

The PUD process is a series of guarantees beginning with the adoption of the local ordinance and extending through post development control of a specific project. Several authors point to the current manifestation of PUD legislation as offering more guarantees to the participants involved than most other current planning tools (2). The PUD regulatory device bridges the land use system and in so doing, attempts to promote planned, self-sufficient and wholly functional environments. Its key is mutual protective control which terminates the effort at the first indication of unsustained participant satisfaction.

Protection begins with the selection of the regulatory technique within which the PUD legislative mechanism will be exercised. The continued relationship of the governing body and planning board synonymous with policy and administration is assured if the PUD ordinance becomes an amendment to the zoning ordinance.

The procedure for introducing a specific proposal extends this protection to the developer as he is guaranteed both prompt and singular action on his proposal and non-changing standards over the period of its development.

The plat approval process, if the singular final plan is opted for, provides for the municipality assurance that the developer's final plan is in substantial agreement with what was initially proposed and given tentative local approval. If the staged procedure is chosen, similar agreement insurance is at hand and accompanies additional guarantees that each completed stage will be self contained and well within the gross density requirements.

The conditions upon which a PUD approval is granted further extent this protective blanket as they assure the municipality that: (1) it will be dealing with a single developer, uniformly responsible for all land use aspects of his project, (2) the development will be of sufficient size and therefore, in sufficient need of specialized land use treatment, (3) a maximum overall density will not be exceeded even though specific sectors may vary considerably, (4) there will be a definite land use balance which attempts to match service costs with anticipated revenues, (5) usable and non-fragmented open space is provided and maintained for a significant segment of the population, (6) community public facilities supporting necessary services are integral parts of the planned development package and finally, (7) the development and its community mechanisms will remain intact in basic fulfillment of the agreement under which it was permitted.

Specifics

Initial Regulatory Techniques

As is now clearly evident the nature of planned unit development involves substantial contributions from both zoning and subdivision control. The literature, once somewhat uncertain under which regulatory aegis the legislative mechanism for PUD would lie, has now solidified about the former in general agreement that the PUD ordinance should be an adjunct of (amendment to) the zoning ordinance (3,4). The distinction is only important here to the effect that it neither limits innovation nor subverts continuing relationships between the legislative body and the planning board in land use matters. It was felt that innovation

would be least limited if the PUD provision was external to and not tied down by the main regulatory document (5). It was similarly felt that since a "use" change was nominally involved the public through elected representatives should approve its concept and the appointed members of the planning board be left to iron out its subsequent details (5).

Once the general nature of the regulatory device is known there are many possible avenues for exercising legal control. PUD may be treated as a floating zone or as a conditional use or possibly, several other controlling mechanisms. In a study of state, county and local PUD ordinances conducted by the New Jersey Department of Community Affairs (1966), 65 percent of the sample ordinances placed planned development in floating zones* (7). The other most frequent example was that it be handled as a conditional use** (7). Actually, the distinction between the two methods of dealing with PUD may be more nominal than real. In fact in New Jersey, a combination of the above procedures is used whereby the conditions imposed on PUDs resemble the conditional use and the fixing of PUD boundaries at the time of approval resembles the floating zone (6). Basically the New Jersey procedure combines the best of both worlds. To some degree the general location of potential PUDs are known, i.e., within a

* A procedure whereby a zone comes to rest over any municipal area if certain conditions are fulfilled.

** The ordinance lists specific zones in which these developments would be considered as well as the conditions which must be met prior to approval.

specified district, but there is no assumption that land will be assembled under unified control or no requirement that owners of such land must develop it as a PUD.

Specific Approval Procedure

In terms of procedure, the way most specific proposals were treated (again as a result of the NJDCA study) is that a proposal is submitted directly to the planning board who confers with other government agencies and then recommends approval or disapproval to the governing body. In this case or the footnoted instance, PUD substitutes a single review process for the heretofore existing three stage review: (1)

- 1) platting approval under subdivision regulations,
- 2) land use reclassification under zoning,
- 3) site review under building and zoning codes.

Within a certain time period after application a public hearing is held and the project is either approved or disapproved. The PUD ordinance spells out in detail what evidence is required to be presented at this hearing.

If the project is granted tentative approval application for final approval may be made at once or in stages. No hearing is required for the final plan if it is in substantial compliance with the previous plan given tentative approval. If the staged plan is opted for, upon compliance with the tentative plan and, additionally upon a showing of the production of functionally self contained units, final stage approval is also given without hearing (6).

Conditions to be Met Prior to Approval

In brief review, the grant of approval of a planned unit development is based on the fulfillment of certain conditions. These are general standards covering such areas as type of control (both during and after development), minimum size, permitted uses, maximum density and the provision of open space and public facilities. Each of these are formidable and basically essential parts of the PUD "process."

In the case of development control, approval is based upon demonstration that the area is under unified rather than fragmented control. This may be accomplished either by single ownership, long term lease, agency or other legal device (6).

The minimum size requirement, as mentioned earlier, is a requirement less often found than others for project approval. Minimum size will vary depending upon the type of development and specific location. It may be stated either in terms of dwelling units or acres. In the latter, for peripheral areas a minimum of 1000 acres for PUDs employing the three main land use categories does not seem unreasonable. It should be emphasized here that the peripheral PUD, in less than significant dosages and in the absence of an adjacent holding zone, may actually foster rather than retard sprawl.

A maximum density requirement is a more frequent provision in PUD ordinances. In 60 percent of the ordinances examined by NJDCA, density is strictly regulated by either a maximum number of units per acre or by a minimum lot area for each dwelling unit including a share of common open space. A smaller number (18 percent) permitted increases in density as a bonus for meeting

certain design criteria whereas an even smaller number (15 per cent) permitted increases in density at the discretion of the local planning board (7).

Permitted land uses again a subject of approval are usually found in the form of acceptable percentages of residential, commercial and industrial land usage. In most cases the amount of permitted nonresidential uses are related to the extent of residential development which additionally has a prior linkage with the quantity of acreage involved (8). Developments with large numbers of residential units for sustained economic balance in many cases are accompanied by commercial and industrial uses so massive as to be regional in nature. The PURD as mentioned previously is much smaller and in most instances not involved in the current regional/non-regional controversy.*

The requirements for open space, if a condition of approval, contain provisions covering its quantity, location and maintenance. The first requirement is either stated as a minimum acreage requirement per "X" dwelling units or as a direct percentage of the gross acreage. The second requirement frequently calls for the planning board to approve the proposed location of open space. Finally, maintenance of the open space may be assigned to the residents of the development in the form of a "Home Association" or "Community Trust" or to the municipality upon the land's allocation for public use. The former appears to be the legal device most extensively used (6).

* The local ordinance in Mount Laurel Township, New Jersey was held invalid in a lower court because it permitted the commercial area of a PUD to be regional in nature in violation of the enabling statute. The enabling statute modified from a model statute designed for a PURD is unduly restrictive in this instance. Subsequent legislation will attempt to rectify the obvious shortcomings of the enabling legislation.

The provision of community services as needs arise is an essential part of the PUD process. Most of the necessary utility "hardware" is mandated by referral of the developer to the subdivision ordinance. Other requirements such as land for schools and emerging facilities or the capital structures themselves become part of the municipal/developer bargaining process.

Finally, the on-going preservation of the PUD development as planned is an essential guarantee. The final development plan controls the development after it is finished. No subsequent major structural or use change will be permitted unless approved by council; similarly, minor changes although discouraged, must be approved by the planning board. Subsequent subdivision of the land is also frowned upon, yet if permitted, must meet the basic requirements of the local subdivision ordinance (5).

In summation, PUD as an instrument of land use control while permitting certain increases in local administrative discretion also provides sufficient safeguards to insure that this discretion is not used unwisely. This does not mean, however, that a lay planning board completely lacking professional assistance should attempt to embrace a PUD. PUD is a major local undertaking and while it employs a considerable number of municipal safeguards, its rigor only partially compensates for lack of sophistication at the local level.

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